

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

WPA 21228 of 2025

**Himadri Speciality Chemical Limited (Previously known as Himadri
Chemical and Industries Ltd.)**

Vs.

**Assistant/Deputy Commissioner of Income Tax, Central Circle 3(4) &
Ors.**

For the Writ Petitioner : Mr. J.P. Khaitan, Sr. Adv.
Mr. Saumya Kejriwal, Adv.
Mrs. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
Mr. Debarghya Banerjee, Adv.

For the Respondents : Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
Ms. Riya Kundu, Adv.

Hearing Concluded on : 19.11.2025

Judgment on : 08.12.2025

Om Narayan Rai, J.:-

1. This writ petition lays challenge to *interalia* the order under section 148(3) dated June 26, 2025 of the Income Tax Act, 1961 (hereafter “the 1961 Act), the consequential notice dated June 26, 2025 issued under Section 148 and the reassessment proceeding that has begun on the basis thereof.

FACTS OF THE CASE:

2. A brief summary of the case run in the writ petition may first be noticed:

- a)** The petitioner is engaged in the business of manufacturing of coal tar pitch, carbon black etc.
- b)** For the purpose of transportation of the raw material required for manufacturing the items dealt in by the petitioner, the petitioner had, during the years relevant for the present proceedings, engaged Liquid Gold Carriers Private Limited as a transporter.
- c)** On April 9, 2021 a search and seizure operation was conducted at the residential premises of the Director of Liquid Gold Carriers Private Limited (hereafter 'the transporter'). On the same day, a survey operation was also conducted at the office premises of the said company.
- d)** Based on the information/material gathered during the said survey operation, the Assessing Officer initiated reassessment proceedings in respect of the income of the transporter for the Assessment Year (AY) 2019-20 by issuing a notice dated June 28, 2022 under Section 148 of the 1961 Act.
- e)** In connection with the said reassessment proceedings pertaining to assessment year 2019-20, a notice dated July 16, 2022 was also issued to the petitioner under Section 133(6) of the 1961 Act calling upon the petitioner to provide an explanation as regards the allegation of return of cash to the tune of Rs.80,62,000/- by the transporter to the petitioner.
- f)** The petitioner responded to the said notice and supplied requisite details thereby denying receipt of cash from the transporter.

- g)** Ultimately, the Assessing Officer completed the assessment of the transporter by an order dated August 26, 2022 passed under Section 143(3)/147 of the 1961 Act thereby accepting the submissions of the transporter and the explanation furnished by petitioner without making any addition on the basis of the allegation of return of cash of Rs.80,62,000/-.
- h)** On the other hand, the petitioner's income tax return for the assessment year 2018-19 was selected for scrutiny through Computer-Assisted Scrutiny Selection (hereafter "CASS") in respect of certain issues. The same was completed by an assessment order dated March 10, 2021 passed under Section 143(3) of the 1961 Act. By the said order the total income of the petitioner was determined to be Rs.43,72,260/- under normal provision and book profit calculated as per MAT was determined to be Rs.3,56,57,52,516/- under Section 115JB of the 1961 Act.
- i)** Subsequently, a notice dated March 31, 2022 under Section 148 of the 1961 Act was issued to the petitioner with a view to reassess the petitioner's income for the assessment year 2018-19. Such reopening of assessment was also based on the same information gathered by the revenue authorities during the survey proceedings conducted at the office premises of the transporter.
- j)** The allegation was that a sum of Rs.4,75,00,000/- had been returned to the petitioner in cash by the transporter out of the transportation charges of Rs.27,57,96,668/- received by the

transporter from the petitioner for the financial year relevant to the assessment year 2018-19.

k) The said notice under Section 148 of the 1961 Act was followed by notices dated May 25, 2022 under Sections 143(2) and 142(1) of the 1961 Act requiring the petitioner to furnish relevant information that followed thereafter.

l) In response to the notice dated May 25, 2022 under Section 143(2) of 1961 Act, the petitioner furnished a detailed reply annexing therewith all the relevant documents and contended that the petitioner had engaged the transporter for transportation of raw material required by the petitioner for manufacturing items that it dealt in and that the amounts paid to the transporter were only towards transportation expenses. It was denied that any cash was taken back by the petitioner from the transporter as alleged.

m) On August 26, 2022 the Assessing Officer passed an order of assessment under Section 147 of the 1961 Act without making any addition on the ground of cash return of Rs.4,75,00,000/- that formed the basis for reassessment of the petitioner's income for the assessment year 2018-19.

n) The Assessing Officer thereafter initiated reassessment proceedings in respect of the petitioner's income for the assessment year 2019-20, by issuing a notice dated June 26, 2025 under Section 148A(3) of the 1961 Act. Such notice was issued upon overruling the petitioner's objection to the notice to show cause dated March 28, 2025 under section 148A(1) of the 1961 Act.

o) Pertinently, the said notice is also based on information gathered from the survey operation conducted on April 9, 2021 at the office premises of the transporter.

p) It is this reassessment proceeding which forms the subject matter of challenge in the instant writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Mr. J. P. Khaitan, learned Senior Advocate appearing for the petitioner submitted that the impugned reassessment proceeding is bad on two counts. It is submitted that firstly, the reassessment proceeding is actually based on change of opinion and secondly, the impugned reopening notice has been issued by the jurisdictional Assessing Officer while the same ought to have been issued in a faceless manner in terms of the scheme notified under the provisions of Section 151A of the 1961 Act.
4. He took the Court through the notice dated July 17, 2022 issued under Section 142(1) of the 1961 Act to the transporter i.e., M/s. Liquid Gold Carriers Pvt. Ltd. and demonstrated that the same raised two issues - one of which was return of cash to the tune of Rs. 80,62,000/- by the transporter to the petitioner. The notice indicated that such aspect had been unearthed during the course of the survey operation conducted at 161A, B.B. Ganguly Street, 2nd Floor, Kolkata -700012.
5. He then placed the notice dated July 16, 2022 under Section 133(6) of the 1961 Act issued to the petitioner (Annexure - P3 at pages 69 to 70 of the writ petition). Referring to the said notice he asserted that the said notice was also based on the same search and survey operation that had been

conducted on the group companies of the “Swapan Roy Group” on April 9, 2021 whereof the transporter was a flagship company. Inviting the attention of the Court to the queries put to the petitioner by the said notice, it was submitted by Mr. Khaitan that of the multiple queries put to the petitioner, one was - *"reasons for cash return"* to the petitioner by M/s. Liquid Gold Carriers Private Limited amounting to Rs.80,62,000/-.

6. Mr. Khaitan then placed the assessment order dated August 26, 2022 passed against the transporter (Liquid Gold Carriers Private Limited) in respect of assessment year 2019-20 (Annexure - P5 at pages 73 to 77 of the writ petition) and submitted that the fact that no addition was done on the issue of *"return of cash"* clearly established that the Assessing Officer was satisfied that the transaction between the petitioner and the transporter was genuine. It was submitted that such satisfaction was reached by the Assessing Officer upon taking into consideration the notice dated July 17, 2022 issued to the transporter under Section 142(1) of the 1961 Act and the reply thereto submitted by the transporter. It was pointed out that the only addition made in the said assessment order was under Section 40A(3) of the 1961 Act on the ground that the assessee had paid Rs.6,05,340/- above threshold limit of Rs.35,000/-. It was submitted by Mr. Khaitan that if the basis for reopening the assessment proceeding against the transporter had been found to be existent and if the amount was not referable to any business conducted then the same would have been assessed under Section 68 of the 1961 Act and tax on the same would have been levied in terms of Section 115BBE of the 1961 Act. However, since the same has evidently not

been done after considering the material on record, the genuineness of the transaction between the petitioner and the transporter cannot be doubted.

- 7.** It was thereafter submitted by Mr. Khaitan that on the basis of the information gathered from the self-same search and seizure operation conducted under Section 132 of the 1961 Act at the residential premises of Sri Swapan Roy and the same survey operation at the office premises of the transporter (M/s. Liquid Gold Carriers Private Limited) reassessment proceedings in respect of the petitioner's income pertaining to assessment year 2018-19 were also initiated by issuing a notice under Section 148 of the 1961 Act.
- 8.** In the said notice basis of such reopening was also financially cash return to Himadri Chemical and Industries from M/s. Liquid Gold Carriers Private Limited for the assessment year 2018-19.
- 9.** Mr. Khaitan invited attention of this Court to the reply furnished by the assessee in response to the notice issued under Section 143(2) read with Section 147 of the 1961 Act and submitted that upon considering the petitioner's reply, the Assessing Officer passed the assessment order dated August 26, 2022 in respect of assessment order 2018-19 thereby accepting the petitioner's submission and no addition was made.
- 10.** It was then submitted by Mr. Khaitan that when the transaction in respect of the petitioner and the transporter had been found to be genuine in respect of the year 2018-19 for the petitioner and in respect of the year 2019-20 for M/s. Liquid Gold Carriers Private Limited and there was no reason for the revenue authorities to issue fresh notice under Section 148 of

the 1961 Act to the petitioner thereby seeking to reopen the petitioner's case in respect of assessment order 2019-20 passed on the selfsame fact.

11. Mr. Khaitan submitted that it is evident from the records that after examining the records pertaining to the petitioner's dealing with the transporter – M/s. Liquid Gold Carriers Private Limited and upon considering the explanation given by the transporter as well as the petitioner in response to the revenue authority's notice under Section 133(6) of the 1961 Act, the Assessing Officer did not find the transaction pertaining to the assessment year 2019-20 between the petitioner and the transporter to be ingenuine or bogus and did not make any addition on such score to the income of the transporter. Mr. Khaitan asserted that in such view of the matter, the Assessing Officer could not have issued the impugned notice under Section 148 of 1961 Act to the petitioner in respect of assessment year 2019-20 on the allegation that accommodation entries had been provided by the transporter – M/s. Liquid Gold Carriers Private Limited for return for unaccounted income of the petitioner.

12. He relied on a judgment of the Hon'ble High Court at Bombay in the case of ***Marico Ltd. vs. Assistant Commissioner of Income-Tax & Ors.***¹ in support of his contention that if in a regular assessment proceeding, the Assessing Officer has raised queries, examined the records and accepted the version of the assessee, then on the selfsame information reassessment could not be initiated. It was submitted that the said case of ***Marico Ltd.*** (supra) was affirmed by the Hon'ble Supreme Court in the case of ***Assistant***

¹ [2020] 425 ITR 177 (Bom)

Commissioner of Income-Tax vs. Marico Limited². He relied on a Coordinate Bench judgment of this Court in the case of ***India Steamship Co. Ltd. vs. Joint Commissioner of Income-Tax & Ors.***³ and ***Amrit Feeds Ltd. vs. Assistant Commissioner of Income-Tax & Ors.***⁴ for the proposition that when all the necessary information was there before the Assessing Officer in earlier assessment reopening under Section 147 amounted to change of opinion. It was further submitted by Mr. Khaitan that the assessment order dated August 26, 2022 was passed by the same Assessing Officer who had examined the case of M/s. Liquid Gold Carriers Private Limited on the same day (Annexure - P5 at page 73 and Annexure - P15 at page 155).

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

- 13.** Countering the submissions of Mr. Khaitan, Mr. Aryak Dutt, learned Senior Standing Counsel appearing for the revenue authorities, assisted by Mr. Soumen Bhattacharjee, learned Senior Standing Counsel submitted that the case at hand cannot be said to be one of change of opinion. Inviting the attention of this Court to the assessment order dated August 26, 2022 for the assessment year 2018-19 passed in the petitioner's case, it was submitted that the said order neither reflected the basis on which a notice to show cause had been issued nor the consideration bestowed to the answer thereto given by the petitioner. It was submitted that it might have been so that in the prior assessment year the same issue had arisen but the assessment order dated August 26, 2022 (for assessment year 2018-19) did

² (2020) 117 taxmann.com 244 (SC)

³ (2005) 275 ITR 155 (Cal)

⁴ [2012] 344 ITR 187 (Cal)

not reveal that the issue was inquired into and answered by the Assessing Officer in any manner whatsoever.

- 14.** It was further submitted that the writ petition was premature inasmuch as the assessment order was yet to be passed and a Writ Court should refrain from interfering with assessment proceedings at the stage of issuance of a notice for reopening. It was then submitted that the case at hand did not fall within any of the exceptions that may persuade a Writ Court to interfere at the stage of issuance of a notice under Section 148 of the 1961 Act. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Anshul Jain vs. Principal Commissioner of Income-tax & Anr.**⁵ to assert that Writ Court should not intervene at the stage of notice under Section 148 of the 1961 Act.
- 15.** It was further submitted on behalf of the revenue authorities that the case at hand cannot be said to be one of change of opinion inasmuch as the assessment order which had been passed in the case of the petitioner on August 26, 2022 pertained to the assessment year 2018-19 and the present case relates to the assessment year 2019-20.
- 16.** Mr. Dutt relied on a judgment of the Co-ordinate Bench of this Court in the case of **M/s. Britannia Industries Limited vs. Union of India & Ors.**⁶ for the proposition that Writ Court should not interfere in cases where statutory remedies are available unless there is either a clear violation of any of the fundamental rights or there is lack of jurisdiction or any procedural perversity leading to manifest injustice.

⁵ (2022) 449 ITR 256

⁶ WPA 24534 of 2024 (Cal); decided on 23.12.2024

- 17.** He next relied on a judgment of the Hon'ble Division Bench of this Court in the case of ***Shri Shyam Sundar Dhanuka vs. Union of India & Ors.***⁷ for the proposition that correctness of an order under Clause (d) of Section 148 of the 1961 Act can be tested only upon enquiry into disputed questions of fact and in such cases writ jurisdiction cannot be invoked.
- 18.** Another judgment of the Hon'ble Division Bench of this Court in the case of ***Principal Commissioner of Income Tax, Kolkata-III, Kolkata vs. M/s. West Bengal Fisheries Corporation Limited***⁸ was cited for the proposition that when the assessment order under Section 143(3) of the 1961 Act passed in respect of assessment year 2019-20 was totally silent on the liability of the assessee, there could not be said to be any case of change of opinion.

ANALYSIS & DECISION:

- 19.** Proceedings for reassessment of the transporter's income for the assessment year 2019-20 had been initiated on two issues as would be apparent from the notice dated July 17, 2022 issued to the transporter under Section 142(1) of the 1961 Act (Annexure - P1 at pages 58 to 63 of the writ petition). One of the said two issues was cash payments to several persons other than the writ petitioner in violation of the provisions of Section 40A(3) of the 1961 Act and the other issue was cash return to the petitioner. The second issue is relevant for the present proceeding.
- 20.** In response to the said notice under Section 142(1) of the 1961 Act, the transporter gave a detailed reply.

⁷ APOT No. 187 of 2023 (Cal); decided on 30.08.2023

⁸ ITA 71 of 2018 (Cal); decided on 21.05.2024

- 21.** In respect of the same proceeding another notice dated July 16, 2022 under Section 133(6) of the 1961 Act was issued to the petitioner calling for the petitioner's explanation as regards the reasons for cash returned to the petitioner by the transporter in respect of assessment year 2019-20.
- 22.** The petitioner also replied thereto and furnished requisite details by its letter dated July 29, 2022 and clarified thus- *"We have not received any cash from or any cash returned by M/s Liquid Gold Carriers Pvt. Ltd. to us"* (Annexure - P4 at pages 71 & 72 of the writ petition).
- 23.** After considering the replies of the transporter as well as the petitioner the Assessing Officer ultimately passed an assessment order dated August 26, 2022 (for the assessment year 2019-20) without making any addition under either under Section 68 of the 1961 Act. However, there was an addition of a sum of Rs. 6,05,340/- under Section 40A(3) of the 1961 Act. It is thus clear that while there was an addition in respect of the first issue, there was no addition on the second issue of return of cash. (Annexure - P5 at pages 73 to 77 of the writ petition).
- 24.** Records reveal that in the petitioner's case also an assessment order was passed under Section 143(3) for the assessment year 2018-19 on March 10, 2021 (Pages 82-84 of the writ petition).
- 25.** Interestingly, proceedings for reassessment of the petitioner's income for the assessment year 2018-19 were also initiated by issuing a notice under Section 148 of the 1961 Act on March 31, 2022. The issues that were sought to be inquired into and decided by the Assessing Officer were put to the petitioner by a notice dated May 25, 2022 under Section 143(2) read with Section 147 of the 1961 Act. The issue precisely was that the petitioner and

the transporter had engaged in mutual dealings wherein amounts were credited by the petitioner in the account of the transporter through cheque/RTGS/NEFT against bills raised for alleged transportation of consignment and the said amount was returned in cash to the petitioner on various dates.

26. On the same day a notice under Section 142(1) of the 1961 Act was also issued to the petitioner (pages 127 to 129 of the writ petition) calling upon the petitioner to furnish, *inter alia*, "trade relationship and details of transactions with M/s Liquid Gold Carriers Pvt. Ltd. managed and controlled by Mr. Swapan Roy, along with the relevant information" as indicated in the said notice.

27. The petitioner furnished a detailed reply to the said notice thereby indicating that the petitioner had during the year under consideration engaged various transporters to transport its raw material from various places to its manufacturing plants and the said transporter had been engaged by the petitioner to transport its raw material like Liquid Coal Tar, CBFS etc. from various steel plants to its manufacturing plants. It was asserted that the amounts paid to the transporter were towards charges for transportation related to purchases made by the petitioner from large public listed companies or Government companies or imports and that the allegation of return of cash was unfounded. It was emphasized that there was no question of receiving back any sum from the transporter as alleged.

28. After having considered the petitioner's reply to the notice issued under Section 143(2) read with Section 147 of the 1961 Act dated May 25, 2022

the Assessing Officer passed the assessment order on August 26, 2022 in respect of assessment year 2018-19 observing, *inter alia* as follows:-

"4. In response of u/s. 148 of the Income Tax Act, 1961, the assessee electronically filed its return of income for AY 2018-19 on 30.04.2022. Accordingly, notices u/s. 143(2) and 142(1) of the Income Tax Act, 1961 were issued on 25.05.2022 and served upon the assessee.

5. In response to the above notices, the assessee made submission on 23.06.2022.

6. In the light of the above discussion, total income of the assessee is computed as under:

Income as per order u/s. 143(3) dated 10.03.2021

Under Normal Provision : Rs. 43,72,260/-

Under MAT Provision : Rs. 3,56,57,52,516/-

7. Income of the assessee was assessed u/s. 147/143(3) of the Income Tax Act, 1961 as above....."

29. Thus in the petitioner's case too (for the assessment year 2018-19) the Assessing Officer did not make any addition on the ground of return of cash.

30. Upon it being pointed out by Mr. Khaitan, this Court has noticed that the assessment order in the case of the petitioner for the assessment year 2018-19 has been passed on the same date as that of the assessment order in the case of the transporter (Liquid Gold Carriers Private Limited) for the assessment year 2019-20 by the same Assessing Officer.

31. The subject matter of the present writ petition being the reopening notice dated June 26, 2025 under Section 148 of the 1961 Act, has been issued contending that there were undisclosed transactions between the petitioner to the tune of Rs.80,62,000/-. It was alleged that payments were credited to the bank account of the transporter through cheques against bogus bills raised by the transporter (Liquid Gold Carriers Private Limited) and the said amounts were then returned to the petitioner in cash.

- 32.** To wit the issue was one of return of cash to the tune of Rs.80,62,000 by the transporter to the petitioner. Such an issue is veritably the same that was raised in the case of the transporter.
- 33.** A careful comparative reading of - (a) the notice under Section 142(1) of the 1961 Act issued to the transporter in the proceeding for reassessment of the transporter's income for the assessment year 2019-20; (b) the notice under Section 133(6) of the 1961 Act issued to the petitioner in the proceeding for reassessment of the transporter's income for the assessment year 2019-20 and (c) the notice under Section 148(1) of the 1961 Act as also the order under Section 148 (3) of the 1961 Act issued to the petitioner for initiating the proceeding for reassessment of the petitioner's income for the assessment year 2019-20 – would reveal that the reassessment proceedings initiated against the transporter as well as the petitioner in respect of their respective incomes for the assessment year 2019-20 involved the same issue. The following comparative chart would reveal the sameness of the transaction between the parties, the material relied on by the revenue authorities and the issue raised in the relevant proceedings:-

<u>Relevant portion of the notice under Section 142(1) of the 1961 Act issued to the transporter in the proceeding for reassessment of the transporter's income for the assessment year 2019-20</u>	<u>Relevant portion of the notice under Section 133(6) of the 1961 Act issued to the petitioner in the proceeding for reassessment of the transporter's income for the assessment year 2019-20</u>	<u>Relevant portion of the notice under Section 148(1) of the 1961 Act and order under section 148 (3) of the 1961 Act issued to the petitioner for initiating the proceeding for reassessment of the petitioner's income for the assessment year 2019-20</u>
Cash return to "M/s. Himadri Chemical and Industries Ltd. (now known as Himadri Speciality Chemicals Ltd.)	<i>During the course of survey operation conducted at 161A, B.B. Ganguly Street, 2nd Floor, Kolkata-700012, the materials/data having ID</i>	<i>2.6 From analysis of impounded material/data impounded from 161A, B.B. Ganguly Street, 2nd Floor, Kolkata-700012 bearing ID marks LGCPL/PD/1 and</i>

During the course of survey operation conducted at 161A. B.B. Ganguly Street, 2nd Floor, Kolkata-700012, the materials/data having ID mark as LGCPL/1 to LGCPL/6, LGCPL/HD/1, LGCPL/Mob/1, LGCPL/PD/1 & LGCPL/PD/2 have been impounded in respect of transport business of the said group.

From analysis of soft data having ID mark LGCPL/PD/1, it is found that M/s. Liquid Gold Carriers Pvt. Ltd. Had made huge transactions with the assessee “M/s. Himadri Chemical and Industries Ltd. (now known as Himadri Speciality Chemicals Ltd.)” in various years.

The detail of such income is:

A.Y.	Cash return to Himadri Chemicals & Industries Ltd. against bogus bills raised
2019-20	80,62,000/-

mark as LGCPL/1 to LGCPL/6, LGCPL/HD/1, LGCPL/Mob/1, LGCPL/PD/1 & LGCPL/PD/2 have been impounded in respect of transport business of the said group.

From analysis of soft data having ID mark LGCPL/PD/1, it is found that M/s. Liquid Gold Carriers Pvt. Ltd. Had made huge transactions with the assessee “M/s. Himadri Chemical and Industries Ltd. (now known as Himadri Speciality Chemicals Ltd.)” in various years.

The detail of such income is:

A.Y.	Cash return to Himadri Chemicals & Industries Ltd. against bogus bills raised
2019-20	80,62,000/-

LGCPL/4, total amount of bill raised by M/s. Liquid Gold Carriers Private Limited in the name of M/s. Himadri Speciality Chemicals Limited during F.Y. 2014-15 to F.Y. 2018-19 is Rs. 88,63,00,931/-.

From further analysis of same excel sheet of LGCPL/PD/1, it was found that some bills have been adjusted and amount received in cheque has been returned back to Himadri Chemical and Industries Ltd (now known as Himadri Speciality Chemicals Ltd) in cash.

2.7 During the F.Y. 2018-19, out of the said bills raised, it is found that some bogus bills have been adjusted and the amount received in cheque has been returned to M/s. Himadri Chemicals & Industries Limited from M/s. Liquid Gold Carriers Private Limited amounting to Rs. 80,62,000/-. Cash returned to M/s Himadri Chemical and Industries Ltd (now known as Himadri Specialilty Chemicals Ltd.) during various years as per information received is summarized as under:

Financial Year wise Cash returned to HIMADRI CHEMICALS & INDUSTRIES LTD from M/s Liquid Gold Carriers Pvt Ltd	
FY	Sum of Amount
2015-16	33407104
2016-17	35509120
2017-18	47500000
2018-19	8062000
Grand Total	12,44,78,224/-

34. It is therefore clear that the assessment order dated August 26, 2022 passed in the case of the transporter for the assessment year 2019-20 was founded on the opinion formed by the Assessing Officer on the basis of the

same material relating to the same transaction between the same parties (i.e. the petitioner and the transporter) collected during the same search - seizure and survey operation and on the same issue which now form the basis of the impugned reassessment proceedings initiated against the petitioner for the same assessment year i.e. AY 2019-20.

35. The impugned reassessment proceedings have thus been initiated after the Assessing Officer accepted the version of the transporter as well as the petitioner during the inquiry conducted by the said assessing officer for the purpose of reassessment of the income of the transporter for the assessment year 2019-20. It may be reiterated that both the petitioner as well as the transporter had in their respective replies denied that there was any return of cash as alleged.

36. In view of the aforesaid, the present reassessment proceeding is clearly impermissible. In the considered view of this Court it would be a clear case of “change of opinion”. Indeed the principle that assessment of a given assessee for a given assessment year cannot be reopened by the relevant Assessing Officer on the ground of change of opinion is usually applied in the case of the same assessee for the same assessment year but there is no reason why such principle cannot be extended and applied to a case like the one at hand. In the case of reassessment of the transporter’s income for the assessment year 2019-20 the Assessing Officer was required to form an opinion as to whether the transporter had returned cash to the tune of Rs.80,62,000/- to the petitioner. The material which formed the basis of enquiry was the information gathered during the search-seizure and survey operation conducted on April 09, 2021. In the present case of reassessment

of the petitioner's income for the assessment year 2019-20 too, the Assessing Officer is required to form an opinion as to whether the transporter had returned cash to the tune of Rs.80,62,000/- to the petitioner. The material which forms the basis of enquiry is once again the same information that was gathered during the search-seizure and survey operation conducted on April 09, 2021. The question is whether in doing so, would the Assessing Officer not be reviewing the decision taken by the Assessing Officer in the transporter's case? The answer has to be in the affirmative. A reassessment on the same point would indeed be some sort of review of the earlier reassessment and that is prohibited. Law on such score was clearly laid down by the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd.**⁹ as follows:-

"6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place."

- 37.** The matter can be looked at from another angle as well. It has been noted that the same Assessing Officer reassessed the petitioner's income for the assessment year 2018-19 as well as the transporter's income for the assessment year 2019-20 by passing two assessment orders on the same date i.e. August 26, 2022. Interestingly the petitioner's income for the assessment year 2018-19 was also being reassessed for the same issue and on the basis of the same material collected during the search – seizure and

⁹ (2010) 2 SCC 723

survey operation conducted on April 09, 2021. The said Assessing Officer therefore possessed all the information regarding the transactions between the petitioner and its transporter pertaining to the assessment year 2019-20 yet did not proceed to then reopen the petitioner's assessment for the assessment year 2019 – 20. The fact that the Assessing Officer did not make any addition on the ground of return of cash in the assessment order passed against the transporter based on the self-same material for the self-same assessment year upon considering the replies given by the petitioner as well as the transporter would clearly indicate that the Assessing Officer had formed an opinion that there was no issue of return of cash involved in the transaction between the petitioner and the transporter.

- 38.** As regards the contention of Mr. Dutt, learned Senior Standing Counsel appearing for the revenue authorities that this Court should not intervene on the stage of issuance of notice under Section 148 of the 1961 Act, this Court is of the view that the case at hand certainly falls within one of the exceptional cases where this Court should intervene in exercising of its power under Article 226 of the Constitution of India. If a notice under Section 148 of the 1961 Act is issued to reopen a case, such reopening must be done in accordance with law. It is settled law that the Assessing Officer has jurisdiction to reopen a case on the basis of fresh material but it does not have jurisdiction to review a case on the basis of the same material. If the Assessing Officer does so, it will be a case of wrong assumption of jurisdiction which can very well be assailed before a Writ Court under Article 226 of the Constitution of India. It is now well settled that in cases where reopening of assessment has been done arbitrarily, writ petition may be

entertained. Reference in this connection may be made to the judgment of the Hon'ble Supreme Court in the case of **Jeans Knit (P) Ltd. vs. CIT**¹⁰. Paragraph 2 of the judgment is apposite to the context. The same is extracted hereinbelow:-

"2. We find that the High Courts in all these cases have dismissed [Jeans Knit (P) Ltd. v. CIT, 2013 SCC OnLine Kar 6489] · [Jeans Knit (P) Ltd. v. CIT, 2013 SCC OnLine Kar 10514] the writ petitions preferred by the appellant/assessee herein challenging the issuance of notice under Section 148 of the Income Tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. These writ petitions are dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in Calcutta Discount Co. Ltd. v. CIT [Calcutta Discount (P) Ltd. v. CIT, (1961) 41 ITR 191 (SC)] . We, thus, set aside the impugned judgments [Jeans Knit (P) Ltd. v. CIT, 2014 SCC OnLine Kar 5507] and remit the cases to the respective High Courts to decide the writ petitions on merits."

39. The judgment of the Hon'ble Division Bench in the case of **Shri Shyam Sundar Dhanuka** (supra) relied on by Mr. Dutt has been rendered in the peculiar facts of the case where a factual enquiry was needed. It was not a case of change of opinion but a case where "*deeper probe into the matter was required*". The matter at hand is a clear and apparent case of change of opinion.
40. The judgment in the case of **M/s. Britannia Industries Limited** (supra) cited by Mr. Dutt also does not come to the aid of the revenue authorities inasmuch as in that case the Court had observed that the petitioner had "*not demonstrated any such exceptional circumstances warranting this Court intervene*". In the case at hand there is an exceptional circumstance warranting interference as already indicated hereinabove.
41. The judgment in the case of **Principal Commissioner of Income Tax, Kolkata-III, Kolkata** (supra) relied on by Mr. Dutt is equally inapposite to

¹⁰ (2018) 12 SCC 36

the context of the present case. In the said case, it was found that there was no formation of opinion at all in the original assessment order under Section 143(3) inasmuch as the same was totally silent on the liability of the assessee to tax and the assessment order was non-speaking. The case at hand is one where in the order dated August 26, 2022, the Assessing Officer has accepted the version of the transporter as well as the petitioner and dropped the issue of return of cash.

42. As regards the judgment in the case of **Anshul Jain** (supra) the same would again not help the respondents inasmuch as the in the case at hand the very assumption of jurisdiction by the Assessing Officer to reopen the petitioner's assessment is under challenge. In such a case the Court should intervene to prevent abuse of process of law.

43. Mr. Dutt had submitted that the assessment orders dated August 26, 2022 passed in the case of the transporter for the assessment year 2018-19 and the petitioner for the assessment year 2018-19 did not contain reasons to show how the replies given by the transporter and the petitioner respectively had been dealt with and as such the same were cryptic in nature. This Court has noticed that both the orders refer to the replies submitted by the parties, albeit by a one-liner. However, that by itself would not discredit the order and render it cryptic. In the context of an assessment order, it must be noted that it is a quasi-judicial exercise and the same therefore may not live upto the standard of a judicial order. In this

connection an instructive passage from the judgment of the Hon'ble Supreme Court in the case of **S.S. Gadgil vs. Lal & Co.**¹¹ may be noted: -

“9. A proceeding for assessment is not a suit for adjudication of a civil dispute. That an income tax proceeding is in the nature of a judicial proceeding between contesting parties, is a matter which is not capable of even a plausible argument. The Income Tax Authorities who have power to assess and recover tax are not acting as judges deciding a litigation between the citizen and the State : they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State: Commissioner of Inland Revenue v. Sneath [17 TC 149, 164] ; and Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation [(1931) AC 275].”

- 44.** Thus if the Assessing Officer accepts the version of the assessee, he is not required to deal with the assessee's version and elaborate his acceptance thereof in the assessment order.
- 45.** For all the aforesaid reasons, this Court is of the view that the reopening notice under Section 148 of the 1961 Act and the reassessment proceeding initiated on the basis thereof cannot be sustained. The same are therefore set aside. WPA 21228 of 2025 stands allowed. No costs.
- 46.** It is clarified that since the writ petition has been allowed on the ground of change of opinion other ground of challenge namely issuance of notice by the jurisdictional Assessing Officer and not in a faceless manner has not been examined.
- 47.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)

¹¹ (1964) 53 ITR 231